IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

WRIT APPEAL NO.2508 OF 2002

M. Malini .. Appellant/ Petitioner

vs.

The Corporation of Chennai
rep. by its Commissioner
Rippon Buildings
Chennai 600 003. .. Respondent/ Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned Judge Mr. Justice V. Kanakaraj dated 28.06.2002 made in W.P.No.23096 of 2002.

W.P.No.23096/2002 : Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the proceedings bearing G.D.C. No.E6/03594/02 dt. 17.4.2002 of the respondent and quash the same and consequently direct the respondent to promote the petitioner to the post of Accounts Officer with effect from 14.5.1996 with all attendant and monetary benefits.

For appellant : Mrs. Rita Chandrasekaran
for M/s. Aiyar & Dolia

For respondent : No appearance

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JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal is filed against the order of the learned Single Judge dated 28.6.2002 in W.P.No.23096 of 2002.

2. According to the writ petitioner, she was appointed as Head Mazdoor in the respondent Corporation by Memorandum

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No.G.D.C.No.A3/42565/72 dated 24.10.1972 on a consolidated pay of Rs.146/- per month. By Memorandum dated 10.7.1978, 28 candidates of the Senior most Head Mazdoors were appointed as Field Assistants in the scale of pay of Rs.150-4-170-5-225. Among the 28 persons, she was placed at No.8 in the seniority list and she was appointed in the vacancy of one D.Ravindran, in the second zone from 13.7.1978. However, several juniors who were working with her were promoted superseding the seniority and service rendered by the writ petitioner. The respondent issued a Memorandum dated 7.10.1986, regularising the services of 71 persons including the writ petitioner in the establishment in their respective posts from the date of joining. In the said list, the name of the writ petitioner was placed at No.57 and her date of appointment was stated as 13.7.1978 without taking into consideration her date of actual appointment, namely, 24.10.1972. When the writ petitioner was working as Field Assistant, by Memorandum dated 30.10.1979, she was appointed to act as Basic Health Worker. By Memorandum dated 14.7.1987, the respondent promoted 18 Basic Health Workers to the post of Basic Health Inspector under Urban Malaria Scheme. Among the 18 persons, the writ petitioner was placed at No.17 and her seniority was overlooked.

3. On 28.3.1990, the writ petitioner sent a representation to the respondent to consider her case for the appointment to the post of Junior Assistant and revise the seniority in the post of Basic Health Inspector. Since her representation was not properly considered, she filed writ petition, W.P.No.12205 of 1990 and this Court by order dated 20.10.1997 directed the respondent to refix her seniority on merits depending upon the service records available with the respondent within 60 days from the date of receipt of the order. The respondent, by proceedings dated 12.1.1998, informed that the services rendered by the petitioner in the post of Head Mazdoor on consolidated pay would not be counted for seniority, promotion, etc. and that her services after appointment on time scale of pay could only be considered for promotion. One V.Lakshmanan, who is similarly placed and who was appointed along with the petitioner as Head Mazdoor and getting consolidated pay, was working as Accounts Officer as on 12.1.1998. She was, however, promoted as Junior Assistant after completion of 23 years of service. She therefore filed a writ petition in W.P.No.2336 of 1998 before this Court and by order dated 17.7.2001, this Court directed the respondent to proceed afresh by holding a personal hearing after giving due notice to her. After filing the Contempt Petition No.808 of 2001, the petitioner was given personal hearing on 1.4.2002 and orders were passed on 17.4.2002 rejecting the case of the writ petitioner. Hence, she filed the present writ petition. By order dated 28.6.2002, the learned Judge dismissed the writ petition at the admission stage observing that since this Court had already exercised its discretion, there cannot be a discretion to the discretion already exercised. Questioning the same, the writ petitioner has filed the present appeal.

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4. Though notice was served on the Commissioner, Corporation of Chennai, there is no representation for and on behalf of the respondent.

5. Heard Mrs. Rita Chandrasekaran, learned counsel appearing for the appellant.

6. On going through the grievance of the appellant, earlier orders of this Court and the impugned order of the learned Judge dated 28.6.2002, we are unable to share the view expressed by the learned Judge. In fact, the learned Judge has not gone into the merits of the order that was challenged and in the light of the same, we verified the impugned order of the Commissioner of Corporation of Chennai dated 17.4.2002. It is seen that pursuant to the direction of this Court dated 17.7.2001 made in W.P.No.2336 of 1998, notice of hearing was given to the writ petitioner and in fact, she appeared before the Commissioner in-charge on 1.4.2002 at 10.30 a.m. and her statement was also recorded by the Commissioner in-charge. The only grievance of the petitioner, as seen from her statement is that one V.Lakshmanan, who was appointed along with her as Head Mazdoor was working as Accounts Officer whereas the petitioner was working as Junior Assistant. With reference to the said claim, it is the stand of the Commissioner, Corporation of Chennai that in the appointment order dated 21.7.1972, 48 persons were appointed as Head Mazdoor on consolidated pay and the name of V.Lakshmanan was placed at serial No.9. It is also stated that Malini, the petitioner/appellant was appointed in a separate order dated 24.10.1972 and her name was placed at serial No.49 whereas the name of V.Lakshmanan was placed at serial No.9.

7. With regard to the representation said to have been made directly to the Special Officer on 5.9.1979, 09.07.1985 and 28.3.1990, the Commissioner has stated that none of the representations reached the Office of Special Officer and there is no evidence to show that the representations were handed over to the Special Officer directly. Considering the efflux of time, the Commissioner has stated that it is very difficult for the Office to trace out the records of the year 1972-73. Though none appeared before us representing the Commissioner, Corporation of Chennai, in the light of the reasons stated in the order dated 17.4.2002 in which all the details have been considered by the learned Judge, it cannot be construed that the respondent has not considered the claim of the petitioner. As stated by the Commissioner, in the seniority list, the name of Lakshmanan was placed at Serial No.9 whereas the name of the writ petitioner was placed at serial No.49.

We have already noted the factual details that in the appointment order dated 21.10.1972, 48 persons were appointed as Head Mazdoors and only on 24.10.1972, that is, three days thereafter, the writ petitioner was appointed by a separate order. In such circumstances, we are unable to accept the stand taken by the petitioner. However, taking note of the length of service, the educational qualifications and the grievance expressed by her, we

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make it clear that the writ petitioner is at liberty to make a fresh representation highlighting her eligibility for the next avenue of promotion. It is also made clear that if she satisfies all the conditions required for the next promotional post, the same may be considered by the respondent in accordance with law. With the above observation, the writ appeal is disposed of.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

To

The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai 600 003.

1 cc to M/s. Aiyar & Dolia, Advocate, Sr. 11859

Writ Appeal No.2508 of 2002

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